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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

GREGORY WEST ENTSMINGER,

Plaintiff,

vs.

ARANAS, *et al.*,

Defendants.

3:16-cv-00555-MMD-WGC

ORDER

Re: ECF No. 63

Before the court is Plaintiff's Motion for Appointment of Counsel (ECF No. 63). Plaintiff bases his motion on (1) the fact that he has been granted in forma pauperis status and is unable to afford counsel, (2) that the substantive issues and procedural matters in this case are too complex for Plaintiff's comprehension and abilities, and (3) that Plaintiff's incarceration will greatly limit his ability to effectively litigate his case. (*Id.*) Plaintiff further states his case "requires extensive documentary discovery, deposition of prison officials, including the ex-governor who was an attorney general, a federal judge, and not President of the Board of Regents, possibly a presidential candidate." (*Id.* at 6.)

A litigant in a civil rights action does not have a Sixth Amendment right to appointed counsel. *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). The United States Supreme Court has generally stated that although Congress provided relief for violation of one's civil rights under 42 U.S.C. § 1983, the right to access to the courts is only a right to bring complaints to federal court and not a right to discover such claims or even to litigate them effectively once filed with a court. *Lewis v. Casey*, 518 U.S. 343, 354-355 (1996).

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1 In very limited circumstances, federal courts are empowered to request an attorney to represent
2 an indigent civil litigant. The circumstances in which a court will grant such a request, however, are
3 exceedingly rare, and the court will grant the request under only extraordinary circumstances. *United*
4 *States v. 30.64 Acres of Land*, 795 F.2d 796, 799-800 (9th Cir. 1986); *Wilborn v. Escalderon*, 789 F.2d
5 1328, 1331 (9th Cir. 1986).

6 A finding of such exceptional or extraordinary circumstances requires that the court evaluate both
7 the likelihood of Plaintiff's success on the merits and the *pro se* litigant's ability to articulate his claims
8 in light of the complexity of the legal issues involved. Neither factor is controlling; both must be viewed
9 together in making the finding. *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991), *citing Wilborn*,
10 *supra*, 789 F.2d at 1331. Plaintiff has shown an ability to articulate his claims. (ECF Nos. 1, 3, 4, 5, 6,
11 7, 8, 9, 18, 33, 42, 44, 56, 63, 64, 65.)

12 In the matter of a case's complexity, the Ninth Circuit in *Wilborn* noted that:

13 If all that was required to establish successfully the complexity of the
14 relevant issues was a demonstration of the need for development of
15 further facts, practically all cases would involve complex legal issues.
16 Thus, although *Wilborn* may have found it difficult to articulate his
claims *pro se*, he has neither demonstrated a likelihood of success on the
merits nor shown that the complexity of the issues involved was
sufficient to require designation of counsel.

17 The Ninth Circuit therefore affirmed the District Court's exercise of discretion in denying the
18 request for appointment of counsel because the Plaintiff failed to establish the case was complex as to
19 facts or law. 789 F.2d at 1331.

20 Despite Plaintiff's characterization of this action as being complicated, the substantive claims
21 involved in this action are not unduly complex. Plaintiff's Second Amended Complaint was allowed to
22 proceed on the portion of Count I alleging denial of access to the courts against Defendants
23 Jane/John Does, the portion of Count I alleging legal mail violations against Defendant Hollman and
24 Jane/John Does, Count II alleging retaliation against Defendants Dr. Vanhorn, Keast, Jacobs,
25 Missy (dental assistant), Dr. Yup, McBroom, Moyle, Navarro, Walsh, Dr. Aranas, and Austin, Count III
26 alleging deliberate deliberate indifference to serious medical needs against Defendants Dr. Johns,
27 Nurse Kathy, Melissa Mitchell, Keast, Baca, and Aranas, Count IV alleging deliberate indifference to
28 serious dental needs against Dr. Remsen, Ilene Sanborne, Keast, Lois Elliott, Dr. Vanhorn, Missy (dental

1 assistant), Perry, Linda Grankowski, Aranas, Jacobs, Dr. Yup, Dr. Peterson, Jenifer (dental assistant),
2 Summer (dental assistant), Dr. Swope, Snider, and Dr. Bannister, Count V alleging conspiracy against
3 Defendants Sandoval, Miller, Masto, Laxalt, Cegavske, Clinger, Wilden, Aranas, Bannister, Jacobs,
4 Keast, Nurse Sunshine, Reynolds, Haycock, Cox, and Dzurenda, Count VI alleging equal protection
5 violations based on delaying/denying health care to sex offenders against Defendants Missy (dental
6 assistant), Ilene Sanborne, Nurse Sunshine, Jenifer (dental assistant), Perry, Keast, Jacobs, Dr. Yup,
7 Dave (clinic supervisor), Laura (dental assistant), and Alisha (dental assistant), portion of Count VII
8 alleging due process violations for gold fixtures against Defendants Dr. Remsen, Keast, Aranas and Cox,
9 portion of Count VII alleging due process violations related to inmate trust accounts against Defendants
10 Missy (dental assistant), Sanborne, Lara (dental assistant), Dave (clinic supervisor), Melissa Mitchell,
11 Candice (clinic supervisor), Jacobs, Keast, Nurse Sunshine, Reynolds, Haycock, Cox and Aranas,
12 Count VIII alleging state statutory violations against Defendants Dr. Yup, Dr. Swope, Dr. Vanhorn,
13 Dr. Peterson, Dr. Remsen, Cox, Perry, Snider, Jacobs, Keast, Missy (dental assistant), Sanborne,
14 Lara (dental assistant), Dave (clinic supervisor), Melissa Mitchell, Candice (clinic supervisor),
15 Nurse Sunshine, Reynolds, Haycock, Sandoval, Miller, Masto, Aranas and Bannister. (ECF No. 21 at
16 20, 21.)

17 Again, despite the numerosity of claims and Defendants, these claims are not so complex that
18 counsel needs to be appointed to prosecute them. Plaintiff has repeatedly demonstrated an ability to
19 represent his interests, as his lengthy and detailed motion for the appointment of counsel itself
20 demonstrates.

21 Similarly, with respect to the *Terrell* factors, Plaintiff has again failed to convince the court of
22 the likelihood of success on the merits of his claims.

23 While any *pro se* inmate such as Mr. Entsminger would likely benefit from services of counsel,
24 that is not the standard this court must employ in determining whether counsel should be appointed.
25 *Wood v. Housewright*, 900 F.2d 1332, 1335-1336 (9th Cir. 1990).

26 The court does not have the power “to make coercive appointments of counsel.” *Mallard v. U. S.*
27 *Dist. Ct.*, 490 US 296, 310 (1989). Thus, the court can appoint counsel only under exceptional
28 circumstances. *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009) [cert den 130 S.Ct. 1282 (2010)].

1 Plaintiff has not shown that the exceptional circumstances necessary for appointment of counsel are
2 present in this case.

3 In the exercise of the court's discretion, it **DENIES** Plaintiff's Motion for Appointment of
4 Counsel (ECF No. 63).

5 **IT IS SO ORDERED.**

6 DATED: June 4, 2019.

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WILLIAM G. COBB
10 UNITED STATES MAGISTRATE JUDGE
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